

REFERENCE GUIDE

ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) PROGRAM

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

This document is a guide to assist Energy Efficiency and Conservation Block Grant (EECBG) funding Recipients in complying with the requirements of the EECBG funding agreements. Funding Recipients are expected and encouraged to review the specific terms and conditions of their funding agreement for a complete understanding of requirements and responsibilities under the award. While this document provides guidance to funding Recipients, the terms and conditions of the funding agreement take precedence if any conflicts arise.

The Energy Commission anticipates that this reference guide may need to be revised as the various American recovery and Reinvestment Act of 2009 (ARRA) funded programs are implemented. If this document is revised, the Energy Commission will notify Recipients in an E-blast that a new version is available. All EECBG funding Recipients are encouraged to sign up on the Energy Commission's EECBG listserver to ensure program updates are received in a timely manner. Please visit <http://www.energy.ca.gov/recovery/> for more information.

1. WASTE MANAGEMENT PLANS

All ARRA funding recipients must complete and submit a waste management plan in accordance with the guidance provided by the Energy Commission. The Energy Commission has developed a waste management plan template that should be completed and signed by the Recipient to comply with this requirement. Waste management guidance and plan template can be downloaded at <http://www.energy.ca.gov/contracts/recovery.html#eecbg>.

1. Recipient submits Waste Management Plan to the Commission Project Manager (CPM) before generating any waste.
2. If the plan is not complete, the CPM will provide guidance on necessary revisions. Recipient will re-submit a revised plan for Energy Commission review.
3. Once the plan is acceptable, CPM will notify Recipient in writing (via email) that the Energy Commission has accepted the completed plan.
4. Once CPM notifies Recipient that the completed plan has been accepted, Recipient may begin activities that generate waste.

Attachments: Energy Commission Waste Management Plan Guidance
Waste Management Plan Template

References: Paragraphs 25, 30

2. PREVAILING WAGE (DAVIS BACON ACT AND STATE PREVAILING WAGE LAW)

Review/Approval of Prevailing Wages in Subcontracts:

All ARRA funded Recipients entering into subcontracts for services to complete the objectives of their agreements must submit each such subcontract and applicable prevailing wage determination(s) to the CPM. The Energy Commission will review the information and, where prevailing wage rates apply, approve the Recipient to begin work under such subcontracts at specified wage and benefit rates. No work under such subcontracts can begin until the Energy Commission provides this written approval. Note that this approval is not necessary if the Recipient performs its project activities with its own labor force, as prevailing wage requirements do not apply in such circumstances.

1. Recipient submits fully executed subcontracts and applicable prevailing wage determination(s) to the CPM.
2. The Energy Commission will review the subcontract and applicable prevailing wage determination(s) to determine the type of work anticipated and the appropriateness of the identified wage and benefit rates.
3. If acceptable, CPM will provide written approval of the identified wage and benefit rates to the Recipient. The Recipient is only authorized to begin work under the subcontract once the Energy Commission provides such written approval.
4. If the wage and benefit rates identified by the Recipient are not acceptable, CPM will reject the submittal in writing and provide further guidance to the Recipient on next steps.
5. Invoices for subcontractor expenditures will not be approved for payment until the Energy Commission provides the Recipient with written approval authorizing the Recipient to begin work under such subcontracts at specified wage and benefit rates.

Attachments: DOE Desk Guide to the Davis-Bacon Act, available at http://www1.eere.energy.gov/wip/pdfs/doe_dba_desk_guide.pdf.

What Happens if Necessary Job Classifications Do Not Appear in the Applicable Federal Wage Determination?

1. The Recipient will need to submit a Conformance Request to the Energy Commission, which will, in turn, forward the request to the United States Department of Labor (DOL). In making the conformance request the Recipient is asking DOL to “conform” the applicable federal wage determination to include the proposed additional job classification(s).
2. In order to make a conformance request the contractor performing the work must complete a Standard Form 1444 and submit the completed form to the CPM.
3. Instructions for completing Standard Form 1444 may be found at http://www.wdol.gov/db_confmnce.aspx.

4. An explanation of the conformance process is provided in DOL's regulations, which are available at:
http://www.dol.gov/dol/allcfr/Title_29/Part_5/29CFR5.5.htm (see 29 Code of Federal Regulations Section 5.5(a)(1)(ii)(A)).

Attachments: Standard Form 1444

Receipt of Weekly Certified Payrolls:

Recipients who have subcontracts subject to Davis-Bacon prevailing wage requirements are required to submit weekly certified payrolls to the CPM.

1. Under the Davis-Bacon Act all contractors and subcontractors performing work on federally financed or assisted construction contracts must submit, weekly, a copy of all payrolls to the Energy Commission accompanied by a signed "Statement of Compliance" certifying that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper federal or California prevailing wage rate, whichever is higher, for the work performed. See 29 C.F.R. § 5.5(a)(3)(ii).
2. The weekly certified payroll submission must minimally contain the following information: the name and individual identifying number (e.g., the last four digits of the employee's social security number) of each covered worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents), daily and weekly number of hours worked, deductions made and actual wages paid. See 29 C.F.R. § 5.5(a)(3)(i). The required specifications for the Statement of Compliance are provided in 29 Code of Federal Regulations Section 5.5(a)(3)(ii)(B)(1)-(3).
3. To satisfy the requirement to submit weekly certified payrolls accompanied by a signed Statement of Compliance, grantees/borrowers may use the weekly certified payroll form prepared by the United States Department of Labor (DOL), Form WH-347, which is available at <http://www.dol.gov/whd/forms/wh347instr.htm>. Use of Form WH-347 is optional.
4. The Statement of Compliance must be signed by a principal of the firm who has authority to direct the payment of wages and benefits to the workers, i.e., owner or an officer such as president, treasurer, or payroll administrator. The Statement of Compliance must be submitted with an original, handwritten signature or proper electronic signature. Note: the Recipient may not simply copy or scan the Statement of Compliance and forward it to the Energy Commission.
5. Recipient submits certified payrolls each week to CPM until project is complete.
6. Energy Commission reviews certified payrolls for compliance with Davis Bacon requirements.
7. If the weekly certified payroll information is not sufficient, CPM will notify Recipient of deficiencies and will provide guidance on how to correct any deficiencies.

8. All weekly certified payrolls must be current prior to the CPM approving invoices for payment under the funding agreement.

References: Paragraphs 10, 26.n, 26.o, and 28

3. PERMITS

Recipients must submit to the CPM information related to required permits:

- Letter documenting permits or stating that no permits are required.
- Updated list of permits as they change during the term of the grant agreement.

References: Paragraph 12 and Work Statement Task 2

4. RESOLUTIONS

The Energy Commission must be in possession of an accurate and complete authorizing resolution that satisfies the minimum requirements prior to reimbursement of funds. At a minimum, resolutions must:

- Contain an accurate and complete description of the project.
- Acknowledge acceptance of award up to \$ (specific dollar amount).
- Make a determination of regarding CEQA compliance.
- Authorize a person, by title, or authorized designee, empowered to execute agreement and all future documents related to the award.
- Be approved by the Governing Authority with a signature.

References: Paragraph 31, Exhibit 4 of Solicitation PON-09-001

5. NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE (STATE HISTORIC PRESERVATION OFFICER CLEARANCE)

All projects funded must receive proper clearance under the National Historical Preservation Act (NHPA). NHPA clearance letters must: 1) reflect the measures funded by the agreement; 2) document the correct locations where each measure will be installed; and 3) not contain any conditions from the State Historic Preservation Officer (SHPO).

Recipients that have not obtained NHPA clearance must:

1. Review and follow the procedures found at the <http://www.energy.ca.gov/recovery/forms/> under the heading “Update Regarding the Process for Complying with Section 106 of the National Historic Preservation Act.”

2. Projects cannot begin until proper NHPA clearance is received. Project costs incurred prior to receiving NHPA clearance may be deemed unallowable and not eligible for reimbursement under the funding agreement.
3. Once proper NHPA clearance is received, Recipients may begin project activities and seek reimbursement for allowable expenditures under the grant award.

Attachments: Update Regarding the Process for Complying with Section 106 of the National Historic Preservation Act (including Attachments 1, 2, and 3)

References: Paragraph 25.j

6. PROCUREMENT STANDARDS

The Energy Commission recently received new guidance from DOE (DOE Guidance) that clarifies the agency's position on the permissible use of noncompetitive procurement by local jurisdictions receiving funding under the Energy Efficiency and Conservation Block Grant (EECBG) Program. The new DOE Guidance is attached for your reference.

This Section of the Reference Guide includes brief descriptions of provisions in DOE's Financial Assistance Rules that concern the use of noncompetitive procurement and the recent DOE Guidance, and explains how the DOE Guidance applies to the California Energy Commission's EECBG Program.

The Use of Noncompetitive Procurement under DOE's Financial Assistance Rules

The federal procurement standards that apply to local jurisdictions receiving grant funding under the EECBG Program are contained in DOE's Financial Assistance Rules, which are codified at 10 Code of Federal Regulations Section 600.236. Section 600.236 is available at:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=e6c323fded46cb2db95800d66d05d1bb&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&idno=10>

Section 600.236(c) generally requires local jurisdictions receiving DOE grant funding to ensure that their procurement procedures provide for full and open competition. However, under Section 600.236(d)(4)(i), local jurisdictions may use procurement by a noncompetitive process when competitive procurement is infeasible, certain circumstances are present, and a cost analysis is performed pursuant to Section 600.236(d)(4)(ii). More specifically, Section 600.236(d)(4)(i) provides,

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- (A) The item is available only from a single source;
- (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (C) The awarding agency authorizes noncompetitive proposals; or
- (D) After solicitation of a number of sources, competition is determined inadequate.

Recent DOE Guidance and its Application to the California Energy Commission's EECBG Program

In the new DOE Guidance the infeasibility threshold required for use of noncompetitive procurement in Section 600.236(d)(4)(i) is interpreted “broadly.”

DOE interprets ‘infeasibility’ broadly, such that it can apply when a [Recipient] cannot successfully perform or accomplish an activity or project funded with EECBG funds within the recommended timeframes if required to use competitive procurement proposals. Because of the rigorous costing and payment targets of the Recovery Act, DOE recognizes that many [Recipients] with limited staff and resources may not be able to carry out or achieve the objectives of the EECBG Program if compelled to undertake one or more time-consuming competitive procurement proposals. In such instances, [Recipients] may have to use non-competitive procurement to complete a project or program in accordance with the requirements of the Recovery Act.

Similarly, the DOE Guidance broadly defines one of the circumstances identified in Section 600.236(d)(4)(i) as a justification for the use of non-competitive procurement—where a public exigency or emergency will not permit a delay resulting from competitive solicitation. The DOE Guidance provides that it would be appropriate for local jurisdictions to rely upon this provision in the following circumstances.

[Recipients] may be in situations demanding urgent and immediate action to implement an eligible project or activity, and the use of competitive solicitation would create an unreasonable delay under the EECBG Program. [Recipients] may make a determination that the Recovery Act targets require the urgent procurement of third-party goods and services in order to move a project forward in accordance with these timelines.

If a Recipient demonstrates infeasibility and the application of one of the identified circumstances, such as the existence of a public exigency or emergency, then the Recipient need

not seek authorization from the Energy Commission to use noncompetitive procurement.¹ Instead, as stated in the DOE Guidance, the Recipient “must document its procurement activities related to the use of any EECBG funds, account for the existence of infeasibility and additional circumstances related to the use of non-competitive procurement proposals, and retain any records related to their procurement procedures and practices for the life of the award. [Recipients] must also perform the required cost analysis and retain the results.”

According to the DOE Guidance, the only situation that requires the submission of documentation to the Energy Commission is when a Recipient cannot demonstrate the application of the circumstances identified in Sections 600.236(d)(4)(i)(A), (B), or (D), but instead, must resort to Section 600.236(d)(4)(i)(C)—“The awarding agency authorizes noncompetitive proposals”—to justify their use of noncompetitive procurement.

In these instances, a [Recipient] must provide its [CPM] with a sufficient amount of information to demonstrate that competitive procurement was not feasible in light of the Recovery Act timelines and/or project-specific requirements, efforts that the [Recipient] undertook to seek competition, and any other information unique to the [Recipient] that would demonstrate that non-competitive procurement with EECBG funds is necessary.

Significantly, the DOE Guidance states that where a subgrantee’s own procurement procedures require competitive procurement those procedures must be followed when procuring property or services under the EECBG Program. Further, Section 600.236(b)(1) requires subgrantees to follow their own procurement procedures which reflect applicable state and local laws and regulations and conform to the standards of Section 600.236.

Regardless of the method of procurement utilized, Recipients are required to maintain records that sufficiently document compliance with all applicable procurement requirements. This documentation may be requested by the Energy Commission during the course of the funding agreement and will be required at the time of audit. Failure to adhere to the procurement standards may result in the disallowance of project costs. Disallowed project costs already reimbursed by the Energy Commission to the Recipient will require the Recipient to repay those costs.

Attachments: Guidance for Energy Efficiency and Conservation Block Grant Recipients on Use of Procurement Methods, EECBG Program Notice 10-014, United States Department of Energy, June 23, 2010, *available at* http://www1.eere.energy.gov/wip/pdfs/eecbg_procurement_guidance.pdf.

¹ The DOE Guidance states that where approval of the use of noncompetitive procurement is required, such approval will be made by DOE. However, the Energy Commission, as the agency awarding subgrants under the EECBG Program, has been delegated authority by DOE to authorize the use of noncompetitive procurement. Thus, under the EECBG Program, where agency approval of noncompetitive procurement is required, Recipients will seek such approval from the Energy Commission.

7. REGISTRATION REQUIREMENTS

Prior to beginning work, Recipients must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register with the Central Contract Registration (CCR).

DUNS website: http://www.dnb.com/US/duns_update

CCR website: <http://www.ccr.gov>

Recipients must maintain current registrations in the CCR at all times during which it has an active award funded with ARRA funds. A DUNS Number is one of the requirements for registration in the CCR.

8. REPORTING REQUIREMENTS

All reports must be current and adequate prior to the CPM approving invoices for payment.

OMB 1512 Monthly Reporting (via CARS): Recipients must submit reporting spreadsheets to the Energy Commission's FTP website by the 3rd day of each month until the project is complete and the final report accepted by the CPM. CPMs must review and approve each monthly report on the Commission ARRA Reporting System (CARS).

1. Recipients submit their reporting spreadsheet to the FTP website by the 3rd day of each month.
2. CPMs review monthly reporting spreadsheets for accuracy.
3. CPMs work with Recipients to correct any issues/problems/deficiencies.
4. CPMs approve monthly report by the 5th day of each month.

Please refer to the Energy Commission's "ARRA Reporting Process Reference Guide for Subrecipients" for detailed information.

Monthly Progress Reporting: Recipients must submit monthly progress reports to the CPM in accordance with the funding agreement. Progress reports provide an up-to-date narrative on the status of the project and documents any issues or problems with the project. See agreement terms and conditions for all reporting requirements. The CPM will provide a template that includes the required elements of the progress report.

1. Recipient submits progress reports to the CPM in accordance with agreement terms and conditions by the 3rd day of each month.
2. CPM reviews/approves progress report.

Final Report: Recipients must submit a final report in accordance with the funding agreement. CPMs must review and approve the final report prior to approving the final invoice for payment and/or approving release of any retention held.

1. Recipient submits draft final report to CPM 60 days prior to end of grant term.
2. CPM reviews and provides comments to Recipient.

3. Recipient finalizes report and submits to CPM.
4. CPM reviews/approves final report.

Attachments: Monthly progress report template

References: Paragraphs 7, 26.c, and 26.1

9. PAYMENT REQUEST PROCEDURES

All payment requests must be reviewed and approved by the CPM prior to authorizing release of funds for incurred expenditures to ensure the following:

- All reports due to date have been received and approved.
 - All products due to date have been received and approved.
 - All expenses are allowable, reasonable, properly documented (e.g, copies of equipment invoices/receipts, receiving documentation/bill(s) of lading, subcontractor invoices, timecards, etc.), not previously billed, and consistent with approved scope of work and budget.
 - Progress under the project is sufficient to warrant reimbursement of expenses. Progress may be demonstrated through one or more of the following: 1) progress reports; 2) products delivered under agreement; 3) site visits; and/or 4) emails or documented telephone conversations with recipient.
1. Recipient submits payment request to the Energy Commission's Accounting Office using the Energy Commission's Payment Request Form.
 2. If Recipient is not in compliance with award terms and conditions or if payment request contains deficiencies, CPM shall immediately notify Recipient with a dispute form.
 3. CPM works with Recipient to resolve the questions on the invoice. Once payment request issue(s) are resolved, CPM lifts the dispute.
 4. CPM approves the payment request for reimbursement.
 5. Payment is made by the State Controller's Office.

References: Paragraphs 18, 25.k, and 26.k

10. MONITORING, VERIFICATION AND EVALUATION (MV&E)

CPMs will work with Recipients to ensure that the Energy Commission obtains the necessary information to monitor, verify and evaluate the project. Recipients must provide access to sites and records regarding the project funded by ARRA dollars.

Monitoring, Verification and Evaluation: CPM and/or the Energy Commission's MV&E contractor (KEMA, Inc.) will contact a sample of Recipients to obtain information in order to monitor, verify and evaluate the project funded by ARRA dollars. Recipient will provide information regarding:

- project equipment
- installation
- compliance with federal reporting requirements
- data needed to measure and verify electricity and fuel reductions, and associated data as necessary

NOTE: The funding agreement prohibits the Recipient from including KEMA Inc. or a related company known as KEMA Services Inc. as a participant in the project funded by ARRA.

Financial Audit: CPM and/or the Energy Commission's auditor (Perry-Smith) will contact a sample of Recipients to perform financial compliance reviews. Perry-Smith will examine compliance for federal passdown provisions such as Davis-Bacon, Buy American, etc., and will also be testing transactions, verifying expenditures, etc. Recipients will provide information on compliance with agreement terms, recordkeeping, invoices, costs, etc. Perry-Smith will contact Recipients to request information in several possible formats.

- Telephone conference to gather information.
- Desk audit where the Recipient will be required to provide documentation via mail or electronically.
- Onsite review at Recipient's office.

Site Visits/Access to Records: CPM, Energy Commission staff, U.S. Department of Energy representatives and/or Energy Commission contractors may request project records and may also visit Recipient sites to review the physical project, books and records, management control systems, etc.

References: Paragraphs 25.a, 26.f, and 32

11. RECOGNITION OF ARRA FUNDING

Recipient shall publicly recognize ARRA as a source of funding. CPM will provide to Recipient instructions on how to achieve this requirement.

References: Paragraph 26.q

12. SINGLE AUDIT ACT

The Single Audit Act and Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governments, and non-profit Organizations, requires entities that expend equal to or in excess of \$500,000 in a fiscal year to have an audit performed in accordance with the Single Audit Act.

All Recipients must be in compliance with the Single Audit Act prior to receiving payments from the Energy Commission. Before submitting payment requests to the Energy Commission, please ensure that you are in compliance with the Single Audit Act and cleared with the

California State Controller's Office (SCO). More information on Complying with the Single Audit Report can be found at http://www.energy.ca.gov/recovery/documents/2009-08-17_OMB_A-133_The_Single_Audit_Act.pdf.

Attachment: Complying with the Single Audit Report

References: Paragraphs 25.p and 33

13. ACCOUNTING & RECORDKEEPING

Recipients must keep books and records according to the specific recordkeeping requirements in the funding agreements. Below are some of the highlights of these requirements. Please see the specific provisions for detailed requirements.

- Keep separate project records, segregating ARRA funded project.
- Maintain ARRA funds separately from other funds.
- Maintain records that identify the source and application of ARRA funds.
- Keep accounting records with documentation such as cancelled checks, paid bills, payrolls, time and attendance records and subcontract documents.
- Identify specific information for each subawardee.
- Energy Commission may request utility bill data to track energy savings and greenhouse gas reduction impacts

Maintain records for a minimum of 3 years after the final payment has been received or three years after the federal (U.S. Department of Energy) grant term, whichever is later.

References: Paragraphs 19, 26.d, 26.f, 26.i, 26.p, and 27

14. PROJECT SPECIFIC INFORMATION

The work statement for each agreement contains specific products for the project. In most cases, the Recipient will deliver photographs of installed equipment.

15. AMENDMENTS

The Energy Commission's goal is to minimize or eliminate the need for amendments under executed agreements. If an amendment is necessary, Recipients must submit amendment requests in writing to their assigned CPM. Amendments causing the project to fall below the minimum cost effectiveness standard as described in the Block Grant Guidelines are not permitted.

No Cost Time Extensions: In accordance with the Energy Commission's Block Grant Guidelines, project extensions are not permitted. All projects must be complete by the end term date specified in the agreement.

Formal Amendments: Formal amendments are required under certain circumstances, including but not limited to: 1) changes to the Work Statement and/or Budget that modify the purpose of the Agreement; and 2) reallocations of more than 10% of the total budget amount or \$75,000 (whichever is less) between line items of the Category Budget. Formal amendments require business meeting approval and take a ***minimum of 60 days*** to process.

Informal Amendments: Budget reallocations less than 10% of total budget amount or \$75,000 (whichever is less), task due date revisions (if still within the term of the agreement), and certain changes in the equipment budgets can be effectuated through an informal amendment to the agreement and are documented through a Letter of Agreement between the Energy Commission and Recipient.

References: Paragraph 9, Section 18 of the Block Grant Guidelines